

Request for Reconsideration after Final Action

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SERIAL NUMBER	86326332
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MARK SECTION	
MARK FILE NAME	http://tmng-al.uspto.gov/resting2/api/img/86326332/large
LITERAL ELEMENT	COMBATANT GENTLEMEN
STANDARD CHARACTERS	NO
USPTO-GENERATED IMAGE	NO
ARGUMENT(S)	
Applicant's arguments are attached under the Evidence section.	
EVIDENCE SECTION	
EVIDENCE FILE NAME(S)	
ORIGINAL PDF FILE	evi_17322717410-20160413132054382428_.COMBATANT_GENTLEMEN-Exhibits.pdf
CONVERTED PDF FILE(S) (9 pages)	\\TICRS\EXPORT16\IMAGEOUT16\863\263\86326332\xml11\RFR0002.JPG
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ORIGINAL PDF FILE	evi_1-17322717410-20160413132054382428_.COMBATANT_GENTLEMEN-Arguments.pdf
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DESCRIPTION OF EVIDENCE FILE	Arguments; U.S. TESS record; and screenshots of marketing materials for Applicant and Cited Registrant
SIGNATURE SECTION	
RESPONSE SIGNATURE	/cc/
SIGNATORY'S NAME	Caroline Camp
SIGNATORY'S POSITION	Attorney for applicant, NY bar member
SIGNATORY'S PHONE NUMBER	650-843-5990
DATE SIGNED	04/13/2016
AUTHORIZED SIGNATORY	YES
CONCURRENT APPEAL NOTICE FILED	NO
FILING INFORMATION SECTION	
SUBMIT DATE	Wed Apr 13 13:36:58 EDT 2016
TEAS STAMP	USPTO/RFR-XXX.XXX.XXX.XX- 20160413133658294158-8632 6332-5503d7eb7cdb4da73a67 370ee5fa55d2095e9537fc432 ee596f8dbdb7db25aa-N/A-N/ A-20160413132054382428

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Request for Reconsideration after Final Action

To the Commissioner for Trademarks:

Application serial no. **86326332** COMBATANT GENTLEMEN (Stylized and/or with Design, see <http://tmng-al.uspto.gov/resting2/api/img/86326332/large>) has been amended as follows:

ARGUMENT(S)

In response to the substantive refusal(s), please note the following:

Applicant's arguments are attached under the Evidence section.

EVIDENCE

Evidence in the nature of Arguments; U.S. TESS record; and screenshots of marketing materials for Applicant and Cited Registrant has been attached.

Original PDF file:

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Converted PDF file(s) (9 pages)

[Evidence-1](#)

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[Evidence-3](#)

[Evidence-4](#)

[Evidence-5](#)

[Evidence-6](#)

[Evidence-7](#)

[Evidence-8](#)

[Evidence-9](#)

Original PDF file:

[evi_1-17322717410-20160413132054382428_.COMBATANT_GENTLEMEN-Arguments.pdf](#)

Converted PDF file(s) (6 pages)

[Evidence-1](#)

[Evidence-2](#)

[Evidence-3](#)

[Evidence-4](#)

[Evidence-5](#)

[Evidence-6](#)

SIGNATURE(S)

Request for Reconsideration Signature

Signature: /cc/ Date: 04/13/2016

Signatory's Name: Caroline Camp

Signatory's Position: Attorney for applicant, NY bar member

Signatory's Phone Number: 650-843-5990

The signatory has confirmed that he/she is an attorney who is a member in good standing of the bar of the highest court of a U.S. state, which includes the District of Columbia, Puerto Rico, and other federal territories and possessions; and he/she is currently the owner's/holder's attorney or an associate thereof; and to the best of his/her knowledge, if prior to his/her appointment another U.S. attorney or a Canadian attorney/agent not currently associated with his/her company/firm previously represented the owner/holder in this matter: (1) the owner/holder has filed or is concurrently filing a signed revocation of or substitute power of attorney with the USPTO; (2) the USPTO has granted the request of the prior representative to withdraw; (3) the owner/holder has filed a power of attorney appointing him/her in this matter; or (4) the owner's/holder's appointed U.S. attorney or Canadian attorney/agent has filed a power of attorney appointing him/her as an associate attorney in this matter.

The applicant is not filing a Notice of Appeal in conjunction with this Request for Reconsideration.

Serial Number: 86326332

Internet Transmission Date: Wed Apr 13 13:36:58 EDT 2016

TEAS Stamp: USPTO/RFR-XXX.XXX.XXX.XX-201604131336582

94158-86326332-5503d7eb7cdb4da73a67370ee

5fa55d2095e9537fc432ee596f8dbdb7db25aa-N

/A-N/A-20160413132054382428

EXHIBIT A



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A Fearless Heart... A Willing Combatant!

Word Mark	A FEARLESS HEART... A WILLING COMBATANT!
Goods and Services	IC 035, US 100 101 102. G & S: On-line retail store services featuring clothing and headgear. FIRST USE: 20091000. FIRST USE IN COMMERCE: 20091000
Standard Characters Claimed	
Mark Drawing Code	(4) STANDARD CHARACTER MARK
Trademark Search Facility Classification Code	NOTATION-SYMBOLS Notation Symbols such as Non-Latin characters,punctuation and mathematical signs,zodiac signs,prescription marks
Serial Number	77858867
Filing Date	October 27, 2009
Current Basis	1A
Original Filing Basis	1A
Published for Opposition	May 4, 2010
Registration Number	3820918
Registration Date	July 20, 2010
Owner	(REGISTRANT) Red Arme, LLC LIMITED LIABILITY COMPANY NEW YORK 25 Central Park West,

4/12/2016

Trademark Electronic Search System (TESS)

Type of Mark Apt. 2U New York NEW YORK 10023
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EXHIBIT B



COMBATANT GEAR



Justin weber

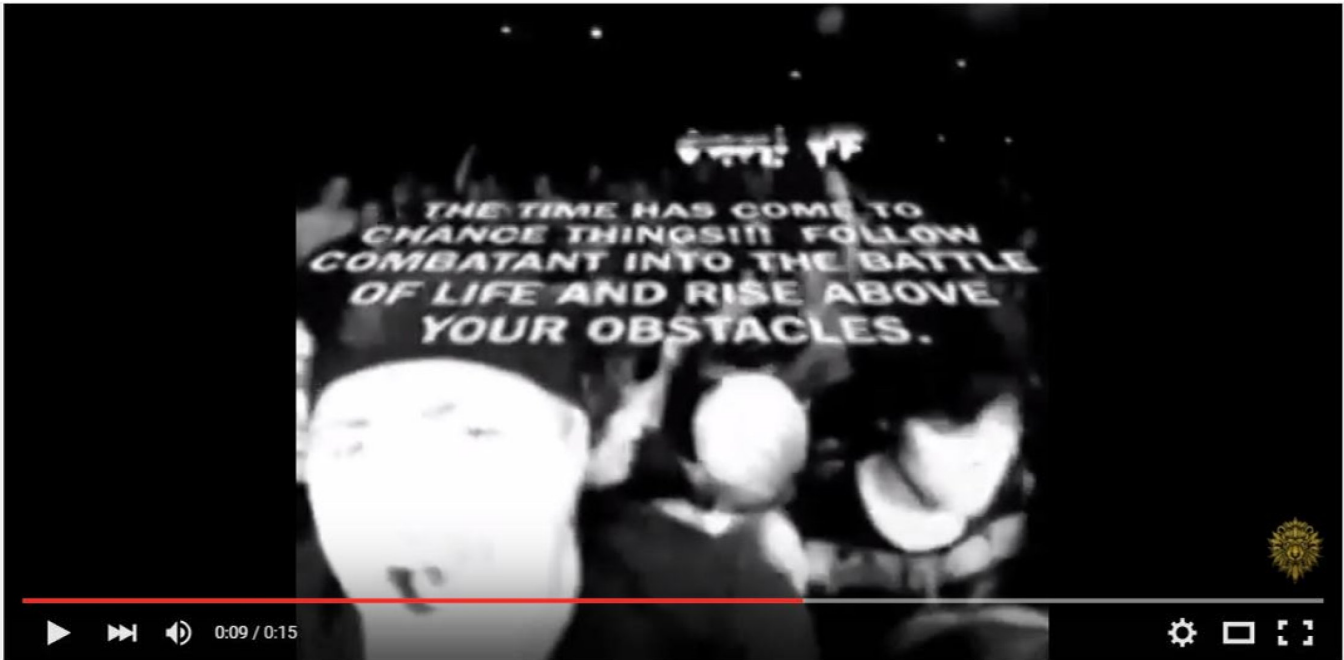
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Combatant



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EXHIBIT C



COMBATANT GENTLEMEN

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Dress Smarter: 4 Looks For Date Night



Combat Gent



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Published on Mar 5, 2015

Whether you're on your first date your or your 10th date, make sure you're dressed to impress! Eric's going to show you 4 date night looks guaranteed to make you feel confident.



Dress Smarter: How to Dress for a Wedding



Combat Gent

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Are you ready for wedding season? Make sure you're prepared to be a dapper wedding guest. Eric's going to show you his favorite wedding looks!

UNITED STATES DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

In Re the Application of:

Applicant: Combatant Gentlemen, Inc.

Mark: COMBATANT GENTLEMEN and
Design


Serial No. 86/326,332

Filed: July 1, 2014

Trademark Law Office 102
Examining Attorney: Cheryl A. Clayton

REQUEST FOR RECONSIDERATION AFTER FINAL ACTION

Applicant Combatant Gentlemen, Inc. (“**Applicant**”), by and through counsel, hereby responds to the final Office Action issued on October 13, 2015 in connection with its above-captioned application for the COMBATANT GENTLEMEN and Design mark (“**Applicant’s Mark**”), the details for which are as follows:

SERIAL NO.	MARK	FILING DATE	GOODS/SERVICES
86/326,332		July 1, 2014	<p>Class 14: Jewelry, excluding jewelry worn or used in connection with athletic events or activities</p> <p>Class 18: Wallets, excluding wallets worn or used in connection with athletic events or activities</p> <p>Class 24: Household accessories, namely household linens</p> <p>Class 25: Apparel, namely, suits, tuxedos, ties, and belts, all of the foregoing for use as business or formal attire and excluding apparel worn in connection with athletic events or activities</p> <p>Class 35: Retail store services featuring business and formal apparel, jewelry, wallets, and household and fashion accessories, and household linens, excluding apparel and accessories worn or used in connection with athletic events or activities</p>

COMBATANT GENTLEMEN and Design (86/326,332)

I. Introduction

In the Office Action issued October 13, 2015, the Examining Attorney expressed concerns regarding a potential likelihood of confusion between Applicant's Mark and the following prior registration (hereinafter the "**Cited Mark**"):

MARK	OWNER	REG. NO. / DATE	GOODS/SERVICES
COMBATANT	Justin Weber ("Cited Registrant")	May 7, 2014 3,950,373	Class 25: Athletic apparel, namely, shirts, pants, jackets, footwear, hats and caps, athletic uniforms; Boxing shorts; Camouflage shirts; Camp shirts; Clothing for athletic use, namely, padded shirts; Clothing for athletic use, namely, padded shorts; Fishing shirts; Gym shorts; Hooded sweat shirts; Long-sleeved shirts; Open-necked shirts; Shirts; Shirts and short-sleeved shirts; Short-sleeved or long-sleeved t-shirts; Short-sleeved shirts; Shorts; Sport shirts; Sports shirts with short sleeves; Sweat shirts; Sweat shorts; T-shirts; Wearable garments and clothing, namely, shirts.

Applicant submits that there is no likelihood of confusion between Applicant's Mark and the Cited Mark, primarily in view of the peaceful coexistence of COMBAT- and COMBATANT-formative marks in the relevant field; the dissimilarities between the goods offered; the different trade channels; the distinguishable commercial impressions conveyed by each mark; the sophistication of the relevant consumers and the care they exercise; and the absence of actual confusion. Applicant previously submitted arguments on these points in its office action response of August 21, 2015, and submits additional arguments herein.

In view of all these arguments, Applicant respectfully requests that the Examining Attorney withdraw her final refusal and approve Applicant's Mark for publication.

II. Likelihood Of Confusion Factors & Analysis

The question of likelihood of confusion between marks is "related not to the *nature* of the mark but to its *effect* 'when applied to the goods of the applicant.' The only *relevant* application is made in the marketplace. The words 'when applied' do not refer to a mental exercise, but to all of the known

COMBATANT GENTLEMEN and Design (86/326,332)

circumstances surrounding use of the mark.” *In re E.I. du Pont de Nemours & Co.*, 476 F.2d 1357, 1360-61, 177 U.S.P.Q. 563 (C.C.P.A. 1973) (original emphasis); *see also Electronic Data Sys. Corp. v. EDSA Micro Corp.*, 23 U.S.P.Q. 2d 1460, 1464 (T.T.A.B. 1992) (“Section 2(d) of the Trademark Act is concerned about the likelihood of confusion, not some theoretical possibility built on a series of imagined horrors.”).

In determining whether there is a likelihood of confusion, courts assess many factors, including as particularly relevant here:

- The number and nature of similar marks in use on similar goods or services;
- The similarity of and the nature of the goods or services;
- The channels of distribution of the goods or services; and
- The similarity or dissimilarity of the marks in their entireties as to appearance, sound, connotation and commercial impression.

E.I. du Pont de Nemours, 476 F.2d at 1361.

An analysis of each of these factors here leads to inevitable conclusion that no confusion will result between Applicant’s Mark and the Cited Mark.

A. Cited Mark Already Co-Exists With Identical And Closely Similar Marks Covering Similar Goods And Services

Applicant has previously submitted arguments that the Cited Mark coexists peacefully in a crowd of registered and applied-for COMBAT-formative marks filed for use in connection with highly similar and/or overlapping goods. It is well established that, where marks coexist in a crowded field, each mark is entitled only to a narrow scope of protection. *Miss World (UK), Ltd. v. Mrs. America Pageants, Inc.*, 856 F.2d 1445, 1449 (9th Cir. 1988) (“In a ‘crowded’ field of similar marks, each member of the crowd is relatively ‘weak’ in its ability to prevent use by others in the crowd . . . Simply put, a mark which is hemmed in on all sides by similar marks on similar goods cannot be very ‘distinctive’. It is merely one of a crowd of marks. In such a crowd, customers will not likely be confused between any two of the crowd and may have learned to carefully pick out one from the other.”) (citing 1 J. McCarthy, *supra*, § 11:26, at

COMBATANT GENTLEMEN and Design (86/326,332)

511, internal quotes omitted). The law further recognizes the marketplace reality that, in a field of widespread, similar marks, consumers can differentiate among them. *Id.*

We also note the following registration for a COMBATANT-formative mark which covers similar clothing retail services and coexists with the Cited Mark (USPTO Trademark Record attached as **EXHIBIT A**):

MARK	OWNER	REG. NO. / DATE	GOODS/SERVICES	USE INFORMATION
A FEARLESS HEART ... A WILLING COMBATANT!	Red Arme, LLC	3,820,918 7/20/2010	On-line retail store services featuring clothing and headgear	https://www.linkedin.com/company/red-arme-llc

A review of the use associated with this registration demonstrates that it was allowed to proceed to registration based on use in connection with tactical training apparel for martial arts. Consequently, the relevant consuming public is accustomed to selecting from multiple registered uses of COMBATANT-formative marks in connection with clothing and apparel, particularly athletic wear. In light of Applicant's own highly distinctive use of the term COMBATANT in connection with high quality business wear, there is no likelihood of confusion.

B. Applicant's Goods Are Targeted to Different Consumers

Applicant has previously submitted arguments concerning the differences between the products offered under Applicant's Mark and the Cited Mark as well as the different channels of distribution. Applicant has also previously submitted arguments that, in view of the differences in Applicant's products, the consumers of Applicant's goods are likely to select them with a higher degree of care. To support these arguments, Applicant further submits that the parties' goods are targeted to different consumers with different interests and needs.

The Cited Registrant's goods are targeted to fans of aggressive activities and sports. Marketing videos for the Cited Registrant's products feature what appear to be a semi-professional boxing match and a heavy-metal music concert (*see* **EXHIBIT B**; screenshots from

COMBATANT GENTLEMEN and Design (86/326,332)

<https://www.youtube.com/watch?v=SaFo1Yl8jH4> and <https://www.youtube.com/watch?v=-3XkN2UmIzo&nohtml5=False>, accessed April 12, 2016). On the other hand, Applicant's goods are targeted at activities for young urban professionals. Marketing videos for Applicant's products feature stylist notes, including on how to dress for date night and weddings (*see* **EXHIBIT C**; screenshots from https://www.youtube.com/watch?v=INMs_dhMLTI&nohtml5=False and <https://www.youtube.com/watch?v=6FCriXfXjYo&nohtml5=False>, accessed April 12, 2016).

Thus, the parties' marks are targeted to consumers with different interest and needs. Consumers will not encounter the parties' marks side-by-side in the marketplace, and there is no likelihood of confusion.

C. Applicant's Mark Conveys A Different Commercial Impression

Although Applicant's Mark and the Cited Mark contain the identical term "COMBATANT", Applicant maintains that the marks in their entireties convey significantly different commercial impressions, and that the additional matter in Applicant's Mark is sufficient to avoid a likelihood of confusion with the Cited Mark. *See* TMEP 1207.01(b)(iii): "Additions or deletions to marks may be sufficient to avoid a likelihood of confusion if: (1) the marks in their entireties convey significantly different commercial impressions[.]" Applicant maintains that the unusual combination of the terms "COMBATANT" and "GENTLEMEN" in Applicant's Mark, along with a distinctive bow-tie design (separately registered under U.S. Reg. No. 4754615), conveys a commercial impression which is highly distinguishable from other COMBATANT-formative marks, including the Cited Mark. The bow-tie design and inclusion of the term "GENTLEMEN" evoke the formal nature of Applicant's goods, in stark contrast with the Cited Registrant's casual athletic wear.

Moreover, a likelihood of confusion cannot arise based on the share inclusion of the term "COMBATANT" since this is not the dominant portion of Applicant's Mark. *See* *Ibid*. Applicant's mark contains three highly distinctive elements, and it cannot be said that the term "COMBATANT" is more dominant than the others. Applicant's Mark is perfectly symmetrical; with the terms "COMBATANT" and "GENTLEMEN" each consisting of three syllables and 9 letters, in identical and equal-size font,

COMBATANT GENTLEMEN and Design (86/326,332)

beneath a symmetrically-placed design, and so consumers will view the mark as a complete whole. Furthermore, Applicant has successfully argued that the term “GENTLEMEN” in the context of Applicant’s Mark is a distinctive term, and the U.S. Trademark Office has already affirmed the distinctiveness of the component bow-tie design through registration of this design on its own under U.S. Registration No. 4754615.

Thus, when properly viewed as a whole, Applicant’s Mark conveys a different commercial impression than the Cited Mark and there is no likelihood of confusion.

III. Conclusion

Based on the significant differences between the Cited Mark and Applicant’s Mark in all of the aforementioned aspects – the dissimilarities between the commercial impressions conveyed by each mark, the parties’ respective goods and different trade channels – as well as widespread use of COMBAT- and COMBATANT-formative marks in the field of Cited Registrant, peaceful coexistence of identical and similar marks across offerings similar to Applicant and Cited Registrant, consumers will not confuse goods and services offered under Applicant’s Mark with those offered under the Cited Mark, and vice versa. Therefore, Applicant requests that the likelihood of confusion be withdrawn.

In view of the foregoing, Applicant respectfully requests that the Examining Attorney withdraw the final refusal and approve the application for publication.